

N. York Oct. 18. 1787



Dear Sir

With respect to your letter I have made a copy to Dr. J. S. C. and will send it immediately. I have not yet had time to read it, and am therefore unable to give you any opinion at present. In other respects it will interest you to know that the right of trial by jury in criminal cases has been admitted into the Convention, and that the right of trial by jury in civil cases has been admitted into the Senate. The right of trial by jury in criminal cases has been admitted into the Convention, and that the right of trial by jury in civil cases has been admitted into the Senate.

I have been this day honored with your favor of the 10th instant, under the same cover with which is a copy of Col. Mason's objections to the work of the Convention.

As he persists in the temper which produced his dissent it is no small satisfaction to find him reduced to such distress for a proper gloss on it; for no other consideration surely could have led him to dwell on an objection which he acknowledged to have been in some degree removed by the Convention themselves - on the parity right of the Senate to propose alterations in money bills - on the appointment of the vice President -President of the Senate instead of making the President of the Senate the vice President, which seemed to be the alternative - and on the possibility that the Congress may ~~infringe~~ over-construe their powers & betray their trust so far as to grant monopolies in trade &c. If I do not forget too some of his other reasons were either not at all or very faintly urged at the time when alone they ought to have been urged; & as the power of the Senate in the case of treaties & of impeachments; and their duration in office, with respect to the latter point I recollect well that he more than once declared his opposition to it. My memory fails me also if he did not acquiesce in if not for the term allowed for the further importation of slaves; and the prohibition of duties on exports by the States. - What he means by the dangerous tendency of the Judiciary I am at some loss to comprehend. It never was intended, nor can it be supposed that on ordinary cases the inferior tribunals will not have final jurisdiction in order to prevent the evils of which he complains. The great mass of suits of in every State lie between Citizen & Citizen, and relate to matters not of federal cognizance. Notwithstanding the strife laid on the necessity of a Council to the President

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I hope you will be kind enough to let me have an opportunity of offering some observations upon the subject.

Mr. Madison, had been established, and known of the world in opposition to other laws, found to it, that as great a clamor would have been heard from some quarters which in general echoed his objection. What can be meant by saying that the common law is not derived by the new Constitution, though it has been adopted by the State Constitutions. He can mean nothing more than the unwritten law, and is right by all the constitutions equally liable to legislative alterations. I am not sure that any notice is particularly taken of it in the instrument of the 1789. There is, nothing more or less than a general declaration that it shall continue along with other branches of law to be in force till legally changed. The constitution of king & crown of England itself, is absolutely silent on the subject. An advice paper during the same session, which declared the common law ^{as before} still in operation, did to the A of Janus 1. to be set at law of the land, merely to divert attention rather than to settle any point of law. Mr. Madison himself, is absolutely silent upon the subject. An advice paper during the same session, which declared the common law ^{as before} still in operation, did to the A of Janus 1. to be set at law of the land, merely to divert attention rather than to settle any point of law. Many instances in this unenacted code. The "service of the laws" by a Committee of Genl. Mass was a member, though not an acting one, abundantly will such instances. That is, of the right of king & crown, which I am sure Mr. Madison does not disapprove fully under this head. What said the Convention have done? If they had in general terms declared the common law to be a law, they could have spoken in upon the legal title of any act in the most material part. They did not do more, they could have brought in from S. P. a thousand interrogatories & anti-slavery doctrines and even the ecclesiastical hierarchy itself, for that is a part of the common law. If they had undertaken a discrimination, they must have formed a code of laws, instead of a constitution. This operation being also not brought forward in the convention, or it has been ^{never} brought forward, the night which Mr. M. may suppose it deserves, it would remain to be decided whether it be expedient to arrange the convention for amending what were not sufficiently brought off, or ^{and} Congress willfully enacted that of an incoming into a general as far as it is not of place.

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I find by a letter from the Chancellor (Mr. Randolph) that he intended writing the act of the convention in its true light, and gives it his unqualified approbation. His arguments will have great effect. The account we have has of course other infallible character very considerably. Much will depend on Mr. Henry and his ^{ability} to find by your letter that his favorable opinion on the subject may yet be had for. — The newspapers here begin to turn with interest & violent calculations of the proposed law; so they are already informed from the Pennsylvania papers, you see them of course. The report however will be reported without flattery.

Is the right evident & imminent? I remain

Yrs. Madison Jr.



George Washington